IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 8569 of 1994

Between:

1 Thummala china Laxmaiah S/o.late Seshaiah
R/o. Gandugapalli, Hamlet of Nagulapalli,
Dammapeta (M), Khammam District.
2 Dodda Venkateswar Rao S/o. Satyanarayana
R/o. Gandugapalli, Hamlet of Nagulapalli,
Dammapeta (M), Khammam District.
3 Yerra Gandhi S/o. Veeraiah
R/o. Gandugapalli, Hamlet of Nagulapalli,
Dammapeta (M), Khammam
4 Thummala Shakunthala W/o. Late BABU Rao
R/o. Gandugapalli, Hamlet of Nagulapalli,
Dammapeta (M), Khammam

..... PETITIONERS

AND

1 Revenue Divisional Officer
Paloncha, Khammam District.
2 Mandal Revenue Officer, Dammapeta Mandal
Dammapeta Khammam District.
3 Akula Anjamma w/o. late Mallesh
R/o. Duradapadu, Hamlet of Nagulapalli,
Dammapeta (M), Khammam
4 Thati Venkatamma W/o. Ramachandram,
R/o. Duradapadu, Hamlet of Nagulapalli,
Dammapeta (M), Khammam
5 Sunnam Suramma D/o. Bakkaiah
R/o. Duradapadu, Hamlet of Nagulapalli,
Dammapeta (M), Khammam
6 Thati Suramma, R/o. Duradapadu, Hamlet of Nagulapalli,

Dammapeta (M), Khammam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of mandamus declaring the action of the respondent-2 in dispossessing the petitioners from the lands in S.Nos. 722/6,722/5,722/4,722/1 to an extent of Ac.2.20 gts., Ac. 3.20 gts., Ac.2.30 and Ac.3.10 gts., respectively by virtue of the symbolic possession alleged to have been delivered without a notice to the Respondents 3 to 6 herein behind the back of the petitioners on 24/4/94 as illegal, and void after declaring that the petitioners are entitled to get their cases considered for Ryotwari Pattas under the A.P.Scheduled Areas Ryotwari Settlement Regulation, 2/70 and consequently to direct the respondents not to interfere with the possession and enjoyment of the petitioners in S.Nos. 722/6,722/5,722/4,722/1 to an extent of Ac.2.20 gts., Ac. 3.20 gts., Ac.2.30 and Ac.3.10 gts., respectively of Nagulapalli Revenue (V), Dammapeta (M), Paloncha Division, Khammam Dist. ignoring the grant of final pattas dt: 15/5/92 in favour of the Respondents 3 to 6 herein.

Counsel for the Petitioners: MR.M.R.K.CHOUDARY

Counsel for the Respondent Nos.1 and 2: GP FOR REVENUE

Counsel for the Respondent Nos.4 and 6: Mr.M.V.DURGA PRASAD

Counsel for the Respondent Nos.3 and 5: None appeared.

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

W.P.NO.8569 OF 1994

ORDER:

Heard both sides.

The petitioners herein claiming to be in possession and enjoyment of the lands bearing survey numbers 722/6, 722/5, 722/4 and 722/1 to an extent of Acs.2.20 gts., Acs.3.20 gts., Acs.2.30 gts and Acs.3.10 gts. respectively, situated at Nagulapalli revenue village in Dammapeta Mandal, Paloncha Division, Khammam District, filed this Writ Petition, inter alia, seeking Writ of Mandamus challenging the action of the respondents herein in dispossessing them from the said lands by virtue of symbolic possession and alleged delivery of the same in favour of the respondent Nos.3 to 6 is behind back of the petitioners on 24-04-1994, as illegal, void and further for declaration that the petitioners are entitled to get their case considered for the grant of rythwary pattas under the provisions of the A.P. Scheduled Areas Rythwary Settlement Regulation, 2/70 and for consequent direction not to interfere with their possession.

The case of the petitioners, in brief, rests on the footing that they have been in possession and enjoyment since their forefathers. Further, since the year 1963-1964 the petitioners were booked by the revenue authorities by issuance of 'B' memos and thus they have been treated as occupants of the Government land and liable for payment of land revenue and which is also being paid by them. However, without knowledge and notice to the petitioners, the respondent-authorities herein appears to have granted pattas in favour of the respondent Nos.3 to 6 on 15-05-1992 in pursuance of the powers conferred under Government Notification No.406, dated 25-07-1958 read with G.O.Ms.No.993, dated 13-10-1969. It is also submitted that these lands are situated in the scheduled areas, which now falls in the Kothagudem Division. Though the petitioners have filed a suit in O.S.No.7 of 1993, as against the respondent Nos.3 to 6 herein seeking perpetual injunction, wherein initially a

temporary injunction was granted, which was later on vacated without properly considering the petitioners' case. Though the petitioners have earlier filed a Writ Petition in W.P.No.1323 of 1994, which was disposed of by this Court on 02-02-1994, directing the disposal of the said application for injunction. In view of the same the Civil Court ought to have considered the matter from proper perspective, rather than disposing of without proper appreciation. It is also contended that entire action on the part of the respondent Nos.1 and 2 herein in the alleged delivery of possession on 24-04-1994 in favour of respondent Nos.3 to 6 is totally without notice to them and would not confer any right. It is further submitted that petitioners have raised larger extent of mango and cashew nut garden, which is now ripe for harvesting. Thus, the case of the petitioners is that they are entitled for grant of rythwari pattas in view of the possession for a period more than eight years, in terms of the regulations 2/70. Thus, without considering the petitioners' entitlement, the entire action on the part of respondents in seeking to make assignment in favour of the respondent Nos. 3 to 6 is not valid. It is also contended that having regard to their possession and they not being legally evicted in terms of the provisions of the A.P. Land Encroachment Act, 1905 issuing notice and conducting enquiry there under, no rights would be conferred in favour of respondent Nos.3 to 6. In view of the aforesaid circumstances, the petitioners seeking relief for consideration of their case. Hence, the Writ Petition.

In the total counter-affidavit, filed on behalf of the respondents herein, it is submitted that the petitioners alleged possession is not valid, nor would it create any right in their favour for considering grant of pattas. In fact, it is submitted that having noticed such encroachments by the petitioners, during the I.T.D.A. survey, the appropriate action has been taken on 26-11-1990 itself under cover of panchanama and therefore, the petitioners cannot claim any right. Thus, it is submitted that since the year 1990 onwards the petitioners are not in possession at all. It is further submitted that in terms of the proposals submitted by the Mandal Revenue Inspector, Dammapeta on 07-02-1991, the assignment pattas were granted in favour of five tribal people of Durdanadu and Gorregattu villages and whose names and extents have been shown in the said counter-affidavit. The said assignment was also approved by the Assignment Review Committee on 24-10-1991 and they were given assignment pattas as per proceedings dated 31-10-1991 and ultimately patta certificates were issued on 15-05-1992 after following the due procedure. It is further pointed out that in the suit filed by the petitioners themselves, on 23-11-1993, after

personal inspection, Agency Divisional Officer vacated the temporary injunction order granted in favour of the petitioners and finally the suit was also dismissed. Having regard to the same, the petitioners cannot make any claim as such. The directions given in the Writ Petition filed by them in W.P.No.1323 of 1994 for disposal of the said injunction application would not in any way confer any rights, more so when the application was already disposed of, even before communication of the order. It is further submitted that the concerned Mandal Revenue Inspector has handed over the possession of the said lands to the tribal assignees under the cover of panchanama and the lands are in possession of tribal assignees from 24-04-1994 and 25-04-1994 and the lands are in the custody of Government from 26-11-1990 onwards. Therefore, the petitioners are not entitled to make any claim. The claim made by the petitioners in regard to the trees was also denied. Thus, having regard to the fact possession has taken as long back as on 26-11-1990 itself under the cover of panchanama, the petitioners cannot make any grievance at this length of time and nor entitled to consider for any rights as such. It is also submitted that the petitioners are not landless poor persons and further they are in possession of different extent of lands as pointed out in para 17 of the counter-affidavit. In view of the same, and also the fact that the petitioners are non-tribals, they cannot claim any occupancy rights in respect of land situated in the scheduled area.

With the above backdrop, as can be seen from the respective pleadings and on consideration of the submissions made from both sides, the only question, which arises for consideration is, whether the petitioners have any right or valid claim for entitling any such patta or they are entitled to challenge the entitlement made in favour of the respondent Nos.3 to 6 herein.

From the above, it is evident that the petitioners' claim squarely based upon the alleged possession for a quite long time since their forefathers and therefore they claim the patta in pursuance of the regulations 2/70. It is also their case that since their possession extends for a period beyond eight years, their case squarely falls well within the required format, as contemplated under the aforesaid regulations and thus without considering their claim, respondent Nos.1 and 2 have made assignment in favour of the respondent Nos. 3 to 6 herein and they have been illegally dispossessed, though symbolically.

However, it is the case of the respondent-authorities that the petitioners have already been duly dispossessed, as long back as 26-11-1990 and since then they have never in possession and enjoyment and further after due process of enquiry, as contemplated under the regulations, the assignment was made in favour of the respondent Nos.3 to 6, who are the tribals. It is also case of the respondents that petitioners are having sufficient extent of land of their own and also being non-tribals, cannot make any claim in respect of the land in scheduled area. In respect of the fact that the petitioners have been already dispossessed in the year 1990 itself and also the fact that the petitioners are having their own extents as shown specifically in the couter-affidavit, there is no denial to that effect, nor there is any material filed by the petitioners to rebut the same. Even in terms of the assignment already granted, the respondent Nos.3 to 6 have been put in possession. Even on a reading of the very writ prayer, it shows that the petitioners were not in possession and it is respondent Nos.3 to 6, who are put in possession and whose possession gets back to the delivery effected in their favour, in terms of the assignment made to them. Having regard to the same, it is quite clear and apparent that the petitioners are totally failed to make out any prima facie case for entitling any patta and there is also no explanation as to why and how they should be entitled any such patta under regulations 2/70, especially when they have already dispossessed in the year 1990 and further they being non-tribals how they are entitled lands, which situated in the schedule area. Having regard to the same, the petitioners are failed to make out any case warranting interference by this Court under Article 226 of the constitution of India.

Hence, I do not find any merits in the Writ Petition and the same is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 08-11-2004.

SKMR

To

1 Revenue Divisional Officer,
Paloncha, Khammam District.
2 Mandal Revenue Officer, Dammapeta Mandal,
Dammapeta, Khammam District.
3. 2CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

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